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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,219	12/03/2004	Yves Christen	58767.000064	2637

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HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
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WASHINGTON, DC 20006-1109

EXAMINER

CHEN, CATHERYNE

ART UNIT	PAPER NUMBER
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1655

MAIL DATE	DELIVERY MODE
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08/31/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/517,219	Applicant(s) CHRISTEN, YVES	
	Examiner CATHERYNE CHEN	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April. 7, 2010 has been entered.

Currently, Claims 11-12 are pending. Claims 11-12 are examined. Claims 1-10 are canceled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

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3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stankov (from IDS EP 1093817 A1) in view of Schwabe (US 5399348).

Stankov teaches treatment for overweight and obesity in humans with active ingredients from Ginkgo biloba (Abstract). Fat is prevented from forming from sugar and fat is eliminated [0028]. The Ginkgo biloba extract contains flavonglucosides [0024] at 0.5-4 parts in weight [0025]. After treatment in an obese human, the body mass as a whole would have decreased fat. The body mass as a whole would have a lower fat to body mass ratio. Therefore, the muscle mass to body mass ratio would increase, which results in a gain in muscle mass to the detriment of fatty mass.

However, it does not teach 20-30% weight flavone glycosides, 2.5-4.5% weight of ginkgolides A, B, C, and J, 2.0-4.0% weight bilobalide, less than 10 ppm alkylphenol, and less than 10% weight proanthocyanidins.

Schwabe teaches extract from Ginkgo biloba leaves has high flavone glucoside contents and contain most of the original ginkgolides and bilobalide contents at 20-30% weight flavone glycosides, 2.5-4.5% weight of ginkgolides A, B, C, and J, 2.0-4.0% weight bilobalide, less than 10 ppm alkylphenol compounds, and less than 10% weight proanthocyanidins (column 3, lines 3-20). The pharmaceuticals contain substantially no danger of allergic reactions because of the removal of alkylphenol compounds (column 2, bottom right; column 3, lines 1-2) from Ginkgo biloba extracts.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the ginkgo biloba extract at claimed concentrations 20-30% weight flavone glycosides, 2.5-4.5% weight of ginkgolides A, B, C, and J, 2.0-4.0% weight bilobalide, less than 10 ppm alkylphenol, and less than 10% weight proanthocyanidins for weight loss because the contents are originally present in ginkgo biloba leaves and flavone glycosides are used in treating obesity (see Stankov [0024]). One would have been motivated to make use the ingredient at concentrations taught by Schwabe for the expected benefit of promoting weight loss without developing allergies. Absent evidence to the contrary, there would have been a reasonable expectation of success in making the claimed invention from the combined teachings of the cited references.

Conclusion

No claim is allowed.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catheryne Chen whose telephone number is 571-272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catheryne Chen
Examiner Art Unit 1655

/Michele Flood/

Primary Examiner, Art Unit 1655